

From: Boyd, Andrew
Sent time: 06/30/2016 11:41:13 AM
To: Connery, Shannon
Subject: FW: FMC OU RD/RA Performance Guarantee -
Attachments: 2016-06-17 Citbank redline to proposed Letter of Credit for FMC OU RD-RA Performance Guarantee.docx 2016-06-17 US Bank redline to proposed Standby Trust Agreement under RD-RA UAO.docx

From: Boyd, Andrew
Sent: Thursday, June 30, 2016 11:19 AM
To: Bill Bacon <bbacon@sbtribes.com>; Kelly Wright <kwright@sbtribes.com>; (b)(6) - Susan Hanson; Jill Grant (jgrant@jillgrantlaw.com) <jgrant@jillgrantlaw.com>
Cc: Sheldrake, Beth <sheldrake.beth@epa.gov>; Williams, Jonathan <Williams.Jonathan@epa.gov>; Yackulic, Ted <yackulic.ted@epa.gov>
Subject: FW: FMC OU RD/RA Performance Guarantee

Attached is 6/17 email from FMC legal counsel with additional bank identified changes to the letter of credit and standby trust agreement that we are consulting with our HQ on.

Andy

Andrew Boyd
U.S. EPA, Region 10
Tel: (206) 553-1222
boyd.andrew@epa.gov
SENSITIVE COMMUNICATION INTENDED ONLY
FOR USE OF RECEPIENTS NAMED ABOVE

From: David Heineck [<mailto:davidh@SummitLaw.com>]
Sent: Friday, June 17, 2016 2:10 PM
To: Boyd, Andrew <Boyd.Andrew@epa.gov>
Cc: Shawn Tollin <Shawn.Tollin@fmc.com>
Subject: FMC OU RD/RA Performance Guarantee

Andy:

FMC has provided Citibank and US Bank respectively with the proposed final versions of the Letter of Credit and associated Standby Trust Agreement we've worked with you and Jonathan to develop. Each bank has responded to us with some changes they require. Their redlines of these documents are attached. The changes Citibank has required to the L/C are very straightforward and consist of updated boilerplate at the end of the L/C that appear to reflect current legal requirements. The changes that US Bank has indicated are needed to the STA are less straightforward but ought to be acceptable.

I'll be in contact with you later today or next Monday to discuss these final changes to the RD/RA UAO Performance Guarantee financial instruments. We'll plan to use the final versions we develop here as the basis for the similar revised financial assurance that FMC is putting into play under the Gay Mine RI/FS ASA, and I'll be in contact with Ted Yackulic about that. Thanks.

 **David Heineck** · Partner

Direct: 206.676.7030
Mobile: (b) (6)
davidh@SummitLaw.com



315 5th Ave S Suite 1000
Seattle, Washington 98104

----- Summit Law Group -----

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this e-mail message in error, please e-mail the sender at the above e-mail address.

DRAFT FOR DISCUSSION PURPOSES ONLY

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:

U.S. EPA Region 10
Docket No. CERCLA-10-2103-0116

FMC Operable Unit of the Eastern
Michaud Flats Superfund Site

FMC Corporation,

Respondent.

Proceedings under Section 106(a)
and 122(b)(3) of the Comprehensive
Environmental Response, Compensation,
and Liability Act, 42 U.S.C. §§ 9606(a) and
9622(b)(3).

**AGREEMENT AND FIRST MODIFICATION TO ADMINISTRATIVE ORDER
REGARDING RESPONSE COST PAYMENTS TO BE PLACED IN SPECIAL
ACCOUNT**

1. The U.S. Environmental Protection Agency (EPA) issued Unilateral Administrative Order for Remedial Design and Remedial Action, EPA Docket No. CERCLA-10-2103-0116 (Order), to FMC Corporation as the Respondent on June 10, 2013 for FMC Operable Unit of the Eastern Michaud Flats Superfund Site (Site).
2. By letter of June 20, 2013, Respondent provided its notice of intent to comply with the Order. Respondent has been performing the Remedial Design and Remedial Action work for the FMC Operable Unit.
3. The Order provided in Section XXII on "Payment of Response Costs" that Respondent "shall pay EPA all Response Costs incurred or to be incurred in connection with this Order, including the costs that EPA incurs overseeing Respondent's implementation of the Order.
4. The Respondent agrees to pay EPA all Response Costs, as defined in Section XXII of the Order, to be incurred in connection with the Order. The EPA and the

1 - Agreement Regarding Response Cost Payments

Respondent agree that all EPA response costs paid by Respondent from the date of this Agreement forward, may be deposited by the EPA in the Eastern Michaud Flats Superfund Site/FMC Operable Unit Special Account 105X to be retained and used to conduct or finance response action at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. The Respondent is advised that violation of Paragraph 4 may subject it to civil penalties as provided in sections 109 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.
6. The scope of this Agreement is limited to the matters addressed above. All provisions of the Order remain in full force and effect to the extent not superseded by the limited terms of this Agreement. Beyond the terms of this Agreement, nothing herein changes Respondent's statements in its June 20, 2013 letter of intent, and Respondent reserves all of its rights and defenses with regard to the Order.

Commented [A1]: May strike to get agreement if respondent objects

So Agreed and Ordered, this _____ day of _____, 2015.

By: _____
EPA/ ECL Office Director

And Agreed to by:

FMC Corporation Authorized Official

DRAFT FOR DISCUSSION PURPOSES ONLY

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:

U.S. EPA Region 10
Docket No. CERCLA-10-2103-0116

FMC Operable Unit of the Eastern
Michaud Flats Superfund Site

FMC Corporation,

Respondent.

Proceedings under Section 106(a)
and 122(b)(3) of the Comprehensive
Environmental Response, Compensation,
and Liability Act, 42 U.S.C. §§ 9606(a) and
9622(b)(3).

**AGREEMENT AND FIRST MODIFICATION TO ADMINISTRATIVE ORDER
REGARDING RESPONSE COST PAYMENTS TO BE PLACED IN SPECIAL
ACCOUNT**

1. The U.S. Environmental Protection Agency (EPA) issued Unilateral Administrative Order for Remedial Design and Remedial Action, EPA Docket No. CERCLA-10-2103-0116 (Order), to FMC Corporation as the Respondent on June 10, 2013 for FMC Operable Unit of the Eastern Michaud Flats Superfund Site (Site).
2. By letter of June 20, 2013, Respondent provided its notice of intent to comply with the Order. Respondent has been performing the Remedial Design and Remedial Action work for the FMC Operable Unit.
3. The Order provided in Section XXII on "Payment of Response Costs" that Respondent "shall pay EPA all Response Costs incurred or to be incurred in connection with this Order, including the costs that EPA incurs overseeing Respondent's implementation of the Order.
4. The Respondent agrees to pay EPA all Response Costs, as defined in Section XXII of the Order, to be incurred in connection with the Order. The EPA and the

1 - Agreement Regarding Response Cost Payments

Respondent agree that all EPA response costs paid by Respondent from the date of this Agreement forward, may be deposited by the EPA in the Eastern Michaud Flats Superfund Site/FMC Operable Unit Special Account 105X to be retained and used to conduct or finance response action at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. The Respondent is advised that violation of Paragraph 4 may subject it to civil penalties as provided in sections 109 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.
6. The scope of this Agreement is limited to the matters addressed above. All provisions of the Order remain in full force and effect to the extent not superseded by the limited terms of this Agreement. Beyond the terms of this Agreement, nothing herein changes Respondent's statements in its June 20, 2013 letter of intent, and Respondent reserves all of its rights and defenses with regard to the Order.

Commented [A1]: May strike to get agreement if respondent objects

So Agreed and Ordered, this _____ day of _____, 2015.

By: _____
EPA/ ECL Office Director

And Agreed to by:

FMC Corporation Authorized Official